

JAN 03 2008

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUN REN,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-71349

Agency No. A95-577-446

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 3, 2007 **

Before: GOODWIN, WALLACE and FISHER, Circuit Judges.

Jun Ren, a native and citizen of China, petitions for review of the Board of Immigration Appeals' ("BIA") decision dismissing his appeal from an Immigration Judge's ("IJ") denial of his application for asylum and withholding of removal, and

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

request for relief under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. We deny the petition.

The record does not compel the conclusion that Ren’s untimely filing of his asylum application should be excused. *See* 8 C.F.R. § 208.4(a)(5).

We review for substantial evidence the IJ’s and BIA’s denial of Ren’s withholding of removal claim on the basis on an adverse credibility finding. *Malhi v. INS*, 336 F.3d 989, 992 (9th Cir. 2003).

Substantial evidence supports the IJ’s and BIA’s denial of the withholding of removal claim based on an adverse credibility determination. Ren testified inconsistently with the testimony he gave at the asylum interview regarding whether he was arrested and harmed in China, and regarding significant details of the harm he allegedly suffered. *See Pal v. INS*, 204 F.3d 935, 940 (9th Cir. 2000).

Ren’s CAT claim also fails because it is based on the same testimony that the IJ and BIA found not credible, and Ren points to no other evidence that he could claim the IJ and BIA should have considered. *See Farah v. Ashcroft*, 348 F.3d 1153, 1157 (9th Cir. 2003).

We conclude that Ren’s due process rights were not violated by the IJ’s decision to admit the asylum officer’s assessment and notes, because their admission did not make the hearing “so fundamentally unfair that [Ren] was

prevented from reasonably presenting his case.” *See Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000).

PETITION FOR REVIEW DENIED.